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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
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9 LEWIS ANDERSON,

10 Plaintiff,

11 v.

12 XAVIER BECERRA, *et al.*,

13 Defendants.
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Case No. 1:20-cv-00068-DAD-SAB (PC)

FINDINGS AND RECOMMENDATION
RECOMMENDING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT BE DENIED,
WITHOUT PREJUDICE

(ECF No. 7)

FOURTEEN (14) DAY DEADLINE

15 Plaintiff Lewis Anderson is a state prisoner proceeding *pro se* in this civil rights action
16 pursuant to 42 U.S.C. § 1983.

17 On January 14, 2020, Plaintiff initiated this action by filing a complaint and an application
18 to proceed *in forma pauperis*. (ECF Nos. 1, 2.) On January 17, 2020, the undersigned issued
19 findings and recommendations, recommending that Plaintiff's application to proceed *in forma*
20 *pauperis* be denied pursuant to 28 U.S.C. § 1915(g), and that Plaintiff be ordered to pay the
21 \$400.00 filing fee in full in order to proceed with this action. (ECF No. 4.) The findings and
22 recommendations were served on Plaintiff and contained notice that any objections thereto were
23 to be filed within thirty (30) days after service. (*Id.* at 4.) On February 3, 2020, Plaintiff filed
24 written objections to the findings and recommendations. (ECF No. 8.) As of this date, Plaintiff's
25 application to proceed *in forma pauperis*, (ECF No. 2), and the undersigned's January 17, 2020
26 findings and recommendations remain pending before the assigned District Judge.

27 Currently before the Court is Plaintiff's motion for summary judgment, filed on February
28 3, 2020. (ECF No. 7.)

1 “Although [Federal Rule of Civil Procedure 56] allows a motion for summary judgment to
2 be filed at the commencement of an action, in many cases the motion will be premature until the
3 nonmovant has had time to file a responsive pleading or other pretrial proceedings have been
4 had.” Fed. R. Civ. P. 56, Advisory Committee’s Notes (2010 Amendments, Note to Subdivision
5 (b)). Indeed, many courts have denied pre-answer and pre-discovery motions for summary
6 judgment as premature despite technical compliance with the timing provisions of Rule 56. See
7 Williams v. Yuan Chen, No. S-10-1292 CKD P, 2011 WL 4354533, at * 3 (E.D. Cal. Sept. 16,
8 2011) (denying plaintiff’s summary judgment motion as premature where defendant had not yet
9 filed an answer and the court had not issued a discovery order); Moore v. Hubbard, No. CIV-S-
10 06-2187 FCD EFB P, 2009 WL 688897, at *1 (E.D. Cal. Mar. 13, 2009) (recommending that
11 plaintiff’s motion for summary judgment be denied as premature where “discovery has not yet
12 begun, defendants have not yet filed an answer and the court has yet to issue a discovery and
13 scheduling order”).

14 Here, although Plaintiff’s motion for summary judgment technically meets the timing
15 requirements of Federal Rule of Civil Procedure 56(b), Plaintiff’s motion is premature. As it
16 stands, the Court has not yet determined whether Plaintiff has stated any cognizable claims for
17 relief, no defendant has made an appearance in this action, no defendant has filed an answer, and
18 the Court has not yet issued a discovery and scheduling order.

19 Furthermore, Plaintiff’s motion for summary judgment does not comply with Local Rule
20 260(a), which requires that “[e]ach motion for summary judgment or summary adjudication shall
21 be accompanied by a ‘Statement of Undisputed Facts’ that shall enumerate discretely each of the
22 specific material relied upon in support of the motion and cite the particular portions of any
23 pleading, affidavit, deposition, interrogatory answer, admission, or other document relied upon to
24 establish that fact.” Compliance with Local Rule 260(a) is mandatory. Therefore, since Plaintiff
25 failed to include a Statement of Undisputed Facts with his summary judgment motion, Plaintiff’s
26 summary judgment motion is procedurally defective.

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1 Accordingly, it is HEREBY RECOMMENDED that Plaintiff's motion for summary
2 judgment, (ECF No. 7), be DENIED, without prejudice.

3 These findings and recommendation will be submitted to the United States District Judge
4 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
5 **(14) days** after being served with these findings and recommendation, Plaintiff may file written
6 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
7 Findings and Recommendation." Plaintiff is advised that the failure to file objections within the
8 specified time may result in the waiver of the "right to challenge the magistrate's factual
9 findings" on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v.
10 Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

11 IT IS SO ORDERED.

12 Dated: **February 5, 2020**


UNITED STATES MAGISTRATE JUDGE